(4) CF 2001

IN THE HIGH COURT OF OF JUDICATURE AT BILASPUR

EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION

CIVIL WRIT PETITION NO. 3646 OF 2003

IN THE MATTER OF :

1. M/s Uniworth Ltd.
(Formerly known as M/s Woolworth (India) Ltd.)
923-945, Urla Industrial Estate,
P.O. Sarora,
Raipur - 493 221

2. Shri Arun Prakash Khetan
aged 39 years, Son of Shri R.P. Khetan
Resident of Hirapur,
Deputy General Manager (Commercial)
Manufacturing unit, Raipur (C.G.) .. Petitioners

Versus

1. Union of India
Through the Secretary
Ministry of Finance,
Department of Customs and
Central Excise, New Delhi

2. The Commissioner,
Customs and Central Excise,
Central Revenue Building
Tikrapara, Raipur - 492 001

P.R. No. 3330/03
Presented by Shri M. Raj Sharma
dated 29.10.03

28/10/03 for UOI

3. The Hon'ble Customs,
Excise & Service Tax
Appellate Tribunal,
Western Wing-2,
R.K.Puram, New Delhi .. Respondents

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRITS IN THE NATURE OF CERTIORARI AND/OR IN THE NATURE OF MANDAMUS FOR SETTING ASIDE THE ORDER NO. A/455/03-NB (SM) DATED 10.4.03 PASSED BY THE RESPONDENT NO. 2 DISMISSING THE APPEAL FILED BY THE PETITIONER ON THE GROUND OF DELAY WITHOUT GOING INTO THE MERITS

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3646/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Division Bench :

Hon'ble Shri Fakhruddin, J
& Hon'ble Shri Dhirendra Mishra, J

9/12/2004

Shri B.P. Sharma, counsel for the petitioners.

Shri Vinay Harit, Sr. Standing counsel for the Union of India.

Heard learned counsel for both the parties.

2. By the instant petition, the petitioners are challenging the order dated 10-4-2003 (Annexure-P/1) passed by the respondent No.2/The Commissioner, Customs and Central Excise, Central Revenue Building, Tikrapara, Raipur, by which the appeal preferred by the petitioners has been dismissed solely on the ground that the same has been filed beyond the period of limitation prescribed and the application for condonation of delay of 65 days in presenting the appeal has been dismissed holding that the appellants have failed to

CRPRI—FS/350—12...0—50,000.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3646/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

explain the reasons which are beyond their control which caused delay.

3. From perusal of the record it appears that the original order was passed on 15-2-2002, which was despatched on 1-3-2002 and received by the petitioners on 4-3-2002.

4. Shri Sharma, learned counsel for the petitioners, submits that the appeal could not be filed within time as the General Manager of the company was suffering from illness and a certificate to that effect has also been annexed in support of the application for condonation of delay. However, this application was rejected on the ground that the certificate has been issued by the Private Doctor and on the other ground that the General Manager was sick but the company was working. Learned counsel for the petitioners also submits that the respondents did not challenge the averments of the application for condonation of delay. Even the appellate authority has rejected the application.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3646/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

5. Shri Sharma, counsel for the petitioners in support of his contention, placed reliance upon a decision of Hon'ble Supreme Court rendered in the case of ***Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others*** reported in ***(1987) 2 Supreme Court Cases 107***, wherein it has been held that Courts should adopt a liberal and justice-oriented approach. No discrimination should be made merely because State seeking condonation of delay. Delay of only four days on the part of the State in filing appeal against enhancement of amount of compensation for acquisition of land for public purpose to the extent of Rs.14 lakhs was condoned.

6. In the present case, learned counsel for the petitioners submits that the amount of penalty under challenge in appeal is more than Rs.10 lakhs.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

WP 3646/03

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. Shri Sharma, also placed reliance upon a decision of Hon'ble Supreme Court rendered in the case of ***Municipal Corporation, Gwalior vs. Ramcharan (D) by L.Rs. and others*** reported in ***AIR 2003 Supreme Court 2164,*** wherein it has been held that liberal view ought to have been taken by High Court and instead of dismissing appeal High Court ought to have examined whether appeal raises substantial question of law.

8. Having considered the facts and circumstances of the case and material on record, in the opinion of this Court, ends of justice will be served if suitable cost is imposed upon the petitioners for allowing the application for condonation of delay. Accordingly, the petitioners are directed to pay costs of Rs.2,000/- (Rs. Two Thousand Only). If the cost is paid, then the petition is disposed of with a direction to the appellate authority to decide the appeal on its own merits in accordance with law.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 3646/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Gowri	9. With the aforesaid observations the petition stands disposed of. 10. Consequently, M.W.P.No.3292/03 and I.A.No.6544/04 also stand disposed of. Sd/- Fakhruddin Judge	Sd/- Dhirendra Mishra Judge

GRPRJ—FS/350—12/2000—50,000.

15.12.04